

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

JOSE PADILLA, et al.,)	
)	
Plaintiffs,)	Case No. 2:07-410-HFF-RSC
)	
v.)	
)	
DONALD H. RUMSFELD, et al.,)	
)	
Defendants.)	
)	

**INDIVIDUAL FEDERAL DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants Donald H. Rumsfeld, John Ashcroft, Paul Wolfowitz, Lowell E. Jacoby, Michael H. Mobbs, William Haynes, Catherine T. Hanft, Melanie A. Marr, Stephanie L. Wright, Mack Keen, Sandy Seymour, and Dr. Craig Noble (collectively, the “Individual Federal Defendants”) respectfully submit this Notice to alert the Court to the United States Court of Appeals for the District of Columbia Circuit’s recent decision in *Rasul v. Myers*, No. 06-5209, 2009 WL 1098707 (D.C. Cir. April 24, 2009) (“*Rasul I*”). In *Rasul II*, the District of Columbia Circuit, as instructed by the Supreme Court, reconsidered its decision in *Rasul v. Myers*, 512 F.3d 644 (D.C. Cir. 2008) (“*Rasul I*”) in light of the Supreme Court’s decision in *Boumediene v. Bush*, 553 U.S. ---- (2008). *See Rasul v. Myers*, 129 S. Ct. 733 (2008) (mem.).

In their Motion to Dismiss, the Individual Federal Defendants argued that Plaintiffs’ constitutional claims should be dismissed because there are special factors counseling hesitation that preclude the Court from creating a damages remedy for an enemy combatant against the federal officers, soldiers and officials responsible for his designation as an enemy combatant, and his detention and interrogation as such. *See* Individual Federal Defendants’ Motion to Dismiss at

13-25; Individual Federal Defendants' Reply to Plaintiffs' Opposition to Motion to Dismiss at 1-

10. In a Notice of Supplemental Authority, filed on January 13, 2009, Plaintiffs argued that the Supreme Court's decision to vacate *Rasul I* and remand it for reconsideration in light of *Boumediene* undermined the Individual Federal Defendants' special factors argument.

Specifically, Plaintiffs argued that "[t]he plain implication of the Supreme Court's ruling in *Rasul* [*v. Myers*, 129 S. Ct. 733 (2008) (mem.)] is that there is at least a colorable claim that *Bivens* remedies may be available even to non-citizen detainees held at Guantanamo." See Plaintiffs' Notice of Supplemental Authority at 2. However, in *Rasul II*, the District of Columbia Circuit expressly recognized that *Boumediene* notwithstanding, the claims of the *Rasul* plaintiffs are foreclosed by special factors as well as qualified immunity. See *Rasul II*, 2009 WL 1098707 at *4, n.5.

A copy of the *Rasul II* opinion is attached.

Dated: April 29, 2009

Respectfully submitted,

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